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FILED
JUN 11 1943
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1091 100

WILLIAM A. DOSS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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Counsel for Petitioner.

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, William A. Doss, respectfully prays that writ of certiorari issue to review a decision of the Supreme Court of the State of Illinois, affirming the judgment and conviction of the petitioner in the Circuit Court of Piatt County in the State of Illinois of criminal contempt of said Circuit Court of Piatt County, by which affirmance by the Supreme Court of the State of Illinois the sentence of the Circuit Court of Piatt County, Illinois, of a fine in the sum of two thousand dollars and imprisonment in jail for a period of three months was affirmed by the Supreme Court of Illinois.

I.

Short Statement of the Case.

The petitioner was charged in an information for contempt of court. An amended information was filed on May 13, 1942, and the original information is therefore not here in issue. The information charges that a Grand Jury for the Circuit Court of Piatt County was impaneled for the first Monday in October, 1941, and began its investigations, continuing in session until January 15, 1942. The purpose of the Grand Jury being called was to investigate, and if possible, return indictments against the petitioner for criminal libel. Petitioner had been engaged and was the publisher of a newspaper called, Liberty Press and the information accordingly charges that while such Grand Jury was in session the petitioner caused to be delivered to the foreman and a majority of the members of such Grand Jury, copies of his publication issued on November 8, 15th, December 23rd, 26th, 1941, and January 10th, 1942; that the delivery of such newspapers to the Grand Jurors was contemptuous and unlawful and intended to influence the Grand Jurors in the performance of their duties and to impede, obstruct and interfere with the administration of public justice. Copies of the respective publications were attached to the information and made a part thereof by reference. The substance of such published articles is briefly abstracted below.

A.

THE NEWSPAPER ARTICLES CLAIMED TO CONSTITUTE CONTEMPT OF COURT.

(a—Issue of November 8, 1941.) This publication consisted of forty-six mimeographed legal size pages and the information refers to pages 1, 39, 40, 41 and 42 of said issue. The

petitioner in this publication first stated that he was aware that the Grand Jury was about to meet and that the States Attorney, one Glasgow, was calling such Grand Jury into session for the purpose of indicting the petitioner. Petitioner then gave notice to the States Attorney and to each Grand Juror of his willingness to appear voluntarily before such Grand Jury, sign immunity waiver and testify on any and all subjects which the States Attorney or the Grand Jurors desired, calling attention in such notice to his constitutional right to publish facts and the truth concerning any person or any subject matter, when done with good motives and for justifiable ends. The article mentions and reviews several activities on the part of the States Attorney and other lawyers of Piatt County which the petitioner charged would bear investigation, and notifies the Grand Jury that it has the legal right and it is its duty to hear evidence concerning any crime of any person and to initiate investigations, whether the States Attorney so advises or not. The article states that "Now is as good a time as any to start to clean out the Court House", and advises the Christian people of Piatt County to contact the Grand Jurors and ask them to investigate all things in Piatt County. The article gives the names of the foreman and twenty-two members of the Grand Jury. The article further recites the details of several criminal matters arising in Piatt County with which the States Attorney had been connected, and informs the public of the particular unprofessional, illegal and criminal connections of the States Attorney with those various proceedings.

(b—Issue of November 15, 1941.) This issue consists of forty mimeographed legal size pages. The information specifically refers to items appearing on pages 10, 17, 37 and 38, and that certain statements were made in the said publication which were contemptuous. Such article

informed the people of Piatt County that the State's Attorney, Glasgow, in the Muse bastardy case, told and instructed a witness that such witness need not testify, and that such witness could refuse to testify on the constitutional ground that he might incriminate himself, and inquired why the State's Attorney of Piatt County should do anything to hinder, conceal or hold back the truth in a criminal case. The article further reviews the improper activities of the State's Attorney in various legal matters in Piatt County, and on page 37, informs the public that the most contemptible thing which "they could do was to try to have Carl Glasgow, State's Attorney, get the grand jury to indict Judge Doss (the petitioner)"; and on page 38, the published article continues by stating, "you can now understand why it is important to elect a State's Attorney who is really honorable, entirely fair, entirely square to every citizen, with favors to none, and that all shall be treated alike."

(c—Issue of December 23, 1941.) This article informs the public that the State's Attorney, Glasgow, as the tool and instrument in the hands of gangism and attorney power in Piatt County, had appeared before the Grand Jury as a witness, and that having so appeared as a witness, could not sign the indictment as the State's Attorney, and that in order "to cover up" he was getting some other attorney out of the County especially appointed as State's Attorney for the sole purpose of indicting Judge Doss (the petitioner), but that the Supervisors of Piatt County would not authorize the hiring of a Special State's Attorney for that purpose. The article further states that the publisher knows of no law that he was violating and that it certainly could not be contempt of Court to drop Liberty Press issues throughout the County, as Churchill, over in England, was doing over Germany; and the article was not

concealed from anybody, but could even reach the hands of the three Circuit Judges of the district and that if the Grand Jurors could have a copy of that issue they could read the full and complete law on the subject as well as any lawyer could tell them. The article further informed the public that the publisher had never admitted that he was guilty of either civil or criminal libel because the articles published were the truth and were published for good purposes and justifiable reasons. The article told the Grand Jury that it was its duty to consider all the law in any matters that they were investigating and that they should read Section 404 of the Illinois Criminal Code; the article then charged that the reason Shonkwiler, Hutson, Hawbaker and others have not sued the publisher for any damages is because, under Section 6, Chapter 126, Illinois Revised Statute, the publisher can prove the truth of the charges made in the publication as a defense. The article further stated, "No grand juror is bound to accept the interpretation of the law by any State's Attorney. They have taken no oath to do that. If the law were otherwise, then a designing and wicked-minded State's Attorney, as — — — —, can cause irreputable damages, and that is contrary to the spirit o. our Bill of Rights and our Constitution and our Statutes of Illinois, and I charge he has given improper instructions as to the law to our present grand jurors and caused them to take positions adverse to me which otherwise they would not have taken and which they now regret." The article further states, "that the Grand Jurors, not being lawyers, naturally do not know what may be, or may not be, the legal position of an indictment in their hands not yet actually filed and returned to the honorable court—but if they will inquire of any of the three honorable Circuit Judges of this district, they will be advised that as long as an indictment is still in their

hands and has not actually been filed in court the Grand Jury can reconsider the same upon their own motion and withdraw it if they should so decide", and further that "The Grand Jury can require and should require no legal advisor to them to be in their room when they vote an indictment or other matters. The article continues with a statement, "Nothing that I have said herein is intended as charging any disrespect of any kind to the honorable Circuit Court of Piatt County, nor any of its Judges, no matter what Judge or Judges have presided upon any of the matters to date, and the only comment that I would make is, that I think the Judges have done a pretty good job in handling a terrible legal mess that they have been obliged to face and try to manage in the best way that they can with due regard and fairness to the best interest of the parties concerned."

(d—Issue of December 26, 1941.) This article is similar in tone and substance to the previous article, but concludes by stating, "I have published this article to show that really what is causing the world war today is because the world does not recognize and it not willing to live by the principles set forth in our Federal Bill of Rights! This is a vital matter and it is singular that this attorney gang issue could come up in the way that it has, and now presents an issue before our honorable Grand Jury of this County, so it will construe and give life and effect—or death, to not only our Federal Bill of Rights, but our State of Illinois Constitution and our own Statute on the freedom of speech and freedom of publication, as applied to Piatt County."

(e—Issue of January 10, 1942). The article recites that the Circuit Clerk has sent out a notice to the Grand Jury to return on the 15th, which is the last day of the October Term of Court and that the writer is accordingly much

disappointed that they have not been called sooner and because the foreman, Ed. Kanitz, has not called the Grand Jury sooner himself since the publisher had placed several matters in his hands which he cannot possibly dispose of on January 15th, and it looks like those matters are not going to be investigated and that is not as it should be. The article continues by stating that if there were matters that certain attorneys wanted investigated, they would through the State's Attorney, have the Grand Jury back here every day, but now that those attorneys have found out that their scheme is about to touch hot irons, to their own skins, they do not want the Grand Jury to come back, and the publisher further states, "I believe that when the people of Piatt County fully understand this,—another dirty trick of these attorneys,—that they will demand that something be done about these things, and while this Grand Jury, under the guidance of Ed Kanitz, as foreman, may not go into these things, maybe the next Grand Jury will", and the writer expresses the hope that the court of public opinion, the people, will demand a full, fair, frank and honest investigation of all matters and that they are welcome to investigate every charge the writer has made in the Liberty Press, from even the first issue and that the writer will prove his charges and prove his justification.

(Conclusion of Information.)

The information concluded that the matters so published in the Liberty Press were all calculated to prevent, frustrate, influence and interfere with the progress, operation and conduct of the investigation before the Grand Jury and to intimidate and influence it in the performance of its duties and such as to bring the authority and dignity of the court into disrepute and to impair the reputation of the court, to thwart and hinder the due administration of jus-

tice by the court, and that each of the statements aforesaid were willful, wrongful, unlawful, malicious and contemptuous of the court; the information then continued with a prayer that a citation issue out of said court requiring the respondent to appear before said court in a short day to be fixed, to show cause if any, why he should not be punished for contempt of court.

B.

The Pleadings.

To such information and the amended information, the defendant filed a motion to strike, assigning as grounds therefor eleven reasons, briefly summarized as follows:

1. That no part of the actions complained of are alleged to have taken place in the immediate or direct presence of the court.

2. That the information contains no sufficient facts, which, under the law, should subject the respondent to become guilty of any contempt of court.

3. That there is nothing alleged in the information that seeks to prohibit or in any wise interfere with the free purpose and lawful actions of the Grand Jury.

4. That the information does not allege that any of the publications were false or untrue.

5. That it is not alleged that the respondent had done any wrongful or dishonorable thing and has not violated any law.

6. That the information is not specific, is unreasonable, contrary to law and the mere conclusion of the pleader.

7. That the information is totally insufficient in its failure to set forth fundamental principles of law.

8. That if it be the law that the respondent can be cited for contempt of court, then no citizen could be safe in informing any Grand Jury, by mouth, letter or otherwise, of a matter that he in good faith thought should be investigated as a misdemeanor, crime or felony and that it is not the law that a newspaper cannot publish any matters that it might deem proper matters of investigation by a Grand Jury, whether that Grand Jury be in session or about to be in session.

9. That page four of the information, in a certain quotation from the Liberty Press, shows that there is nothing in the entire paragraph that could possibly interfere in a Grand Jury finding indictments in any matters.

10. That the information further quotes from an article published in the Liberty Press and demonstrates that this publication itself did not impede or hinder the Grand Jury in its actions.

11. That it affirmatively appears, from a reading of the whole information that it is predicated upon malice and not upon justice.

The motion to strike the amended information was a repetition of the same grounds and same points contained in the motion made to strike the original information.

The Answer of the Respondent to the Amended Information.

The answer (briefly abstracted), in substance admits the publication of the various numbers of the Liberty Press but as to the allegation that he did deliver or cause to be delivered the copies of the said issues to the foreman and a majority of the members of the said Grand Jury, respondent admits that he did deliver some of the said issues to the foreman, Ed Kanitz, but states that said issues were always

delivered by boy carriers or special persons, delivering to the various residences by throwing the Liberty Press issues upon the porches of the various citizens of Piatt County, as is the common practice of newsboys delivering ordinary newspapers.

That with respect to the delivery or causing to be delivered copies of the said publications to the majority of the members of the Grand Jury, respondent says that he has no knowledge or way of determining what numbers of issues or to what Grand Jurors, any of the same were delivered, some having been delivered by carriers and some by mail.

The respondent denied that any of the said publications were, "with intention wilfully, maliciously and improperly to bring the cause of Justice into contempt and to interfere with and impede its due process, and thus to influence the said Grand Jury," but on the contrary, each and all of the said publications "were made with good motives, for good cause and justifiable ends, and that it was all the truth and no part published maliciously."

The answer further states with respect to each respective article that the same was not published maliciously or wilfully, to bring the cause of Justice into contempt or to interfere with or impede the Grand Jury, but that each respective article was the truth and was published with good motives, for good causes and for justifiable ends.

The answer contained two exhibits, marked "A" and "B", consisting of the affidavits of one Paul Silver and James Busick in which affidavits the respective affiants verify the statements made by the respondent in his answer concerning the connections of the respondent with the Grand Jury proceedings and the factual matters surrounding the Grand Jury's investigation and giving the details and connections of the States Attorney, Glasgow, with this special Grand Jury investigation.

C.

VERDICT.

The court denied the motion to strike the amended information, and upon the face of the pleadings previously reviewed, found the defendant guilty of contempt of court, fixed his punishment at three months in jail and a fine of two thousand dollars and costs of the proceedings.

Motion for stay of execution for seventy days granted; bill of exceptions to be presented within forty-five days; the defendant admitted to bail in the sum of two thousand dollars.

THE OPINION OF THE SUPREME COURT, STATE OF ILLINOIS.

The defendant having perfected his appeal to the Supreme Court of the State of Illinois, the same was considered by that court on printed briefs and arguments and taken under advisement until January 21, 1943, when the Supreme Court of the State of Illinois rendered its opinion affirming the judgment, conviction, fine and sentence of the Circuit Court of Piatt County.

REHEARING.

A petition for rehearing was aptly filed, but denied by the Supreme Court of the State of Illinois, by its order of March 11, 1943.

II.

Statement of Matters Involved and the Reasons Relied On for the Allowance of the Writ.

The discretionary power of this Court to grant writ of certiorari is invoked on the following grounds:

(First) The instant proceeding is a cause wherein the final judgment rendered by the Supreme Court of the State of Illinois, being the highest court of that State in which

a decision could be had, draws in question the validity of a Statute of the State of Illinois on the ground of its being repugnant to the Constitution and Laws of the United States.

(Second) The instant proceeding involves a trial right, privilege and immunity specifically set up and claimed by the defendant (petitioner) under the Constitution of the United States.

(Third) The decision of the Supreme Court of the State of Illinois denies to the petitioner the right of free speech and freedom of the press as defined and granted by the Constitution of the United States, Amendment I (Bill of Rights) and by the Constitution of the States of Illinois, Article II, Sec. 4.

(Fourth) The decision of the Supreme Court of the State of Illinois discloses a confusion and contradiction between the right of freedom of the press as granted by the Federal and State Constitutions and the right of a court to uphold its own dignity and to further judicial process by a denial of that right of free speech and freedom of the press.

(Fifth) The information for contempt here involved charges a matter arising out of and beyond the presence of the court and of a criminal nature. In proceedings charging a contempt out of the presence of the court, no evidence is heard and the respondent, by his mere affidavit may purge himself of the charged contempt. If the affidavits are false, he may be prosecuted for perjury. If the affidavits are true, the court is in duty bound to discharge the defendant. This, the Circuit Court of Piatt County did not do, and the affirmance of the conviction by the Supreme Court of the State of Illinois therefore denied to the petitioner, due process of law to which he was entitled in the State of Illinois.

The holding of the Supreme Court of the State of Illinois renders nugatory the provisions of the Bill of Rights of the Federal Constitution and the Constitution of the State of Illinois granting to the petitioner the right of freedom of speech and of the press, and is in conflict with the decisions of the following cases:

Harry Bridges v. *State of California,* 314 U. S. 252, 86 L. Ed. 192, decided Dec. 8, 1941;

Largent v. *State of Texas,* U. S. Tex., 63 S. Ct. 667, 669 (No. 559, October term, 1942, opinion March 8, 1943).

Jamison v. *State of Texas,* U. S. Tex., 63 S. Ct. 669, 671, 672 (No. 558, October term, 1942. Opinion March 8, 1943).

Conclusion.

Wherefore your petitioner prays that the writ of certiorari issue under the seal of this Court, directed to the Supreme Court of the State of Illinois, commanding said court to certify and send to this Court, a full and complete transcript of the record and of the proceedings of the said Supreme Court of the State of Illinois had in the case numbered 26862 and entitled, *People of the State of Illinois* v. *William A. Doss,* to the end that the decision and judgment of the said Supreme Court of the State of Illinois may be reviewed and determined by this Court as provided by the laws of the United States; and that the judgment herein of the said Supreme Court of the State of Illinois be reversed by this Court and for such further relief as this Court may deem just and proper.

WILLIAM A. DOSS,
Petitioner.

By A. M. FITZGERALD,
His Attorney.